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the plea was bad, it was a judgment on the pleadings, which required no exception to be stated in the order and no bill of exceptions to preserve the rights of defendant thereunder.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 507.]

**8. Appeal and Error (§ 518 (6)\*)—Record—Plea.**—A plea never authoritatively in the record, or which being in is expressly stricken out, must be made the subject of a bill of exceptions or an express order of the court to make it a part of the record on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 507.]

**9. Pleading (§ 104 (2)\*)—Plea in Abatement—Better Writ.**—The rule that a plea in abatement must show a more proper or sufficient jurisdiction in some other court of the state wherein the action is brought cannot avail, where a plea shows a condition of facts under which no court in the state has jurisdiction.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 4.]

**10. Pleading (§ 104 (2)\*)—Plea to the Jurisdiction—Sufficiency.**—A plea to the jurisdiction commencing, "Defendant Bank of Bristol, Incorporated, for special plea \* \* \* comes and says," complying with Code 1904, § 3269, and signed "Bank of Bristol, Incorporated, by A. B. Whiteaker, Attorney," was not bad in form because defendant corporation appeared in person instead of by attorney.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 12, 20.] Whittle, P., and Burks, J., dissenting.

Error to Circuit Court, Washington County.

Action of trover by J. S. Ashworth against the Bank of Bristol. Plea to the jurisdiction rejected and motion to dismiss the case overruled and verdict and judgment for plaintiff, and defendant brings error. Reversed, and order entered overruling objection to plea and remanding.

*John J. Stuart, of Abingdon, and Pennington & Handy, of Bristol, for plaintiff in error.*

*Hutton & Hutton and White, Penn & Penn, all of Abingdon, for defendant in error.*

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FITZGERALD *v.* SOUTHERN FARM AGENCY.

Jan. 24, 1918.

[94 S. E. 761.]

**1. Venue (§ 7\*)—Broker's Commissions—Where Part of Cause of Action Arose.**—Within Code 1904, § 3215, as to venue, part of the cause of action of a real estate agent for commissions arose where the primary contract of agency was made, notwithstanding a sup-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

plemental agency agreement, made elsewhere, conditionally limiting commissions.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 606.]

**2. Pleading (§ 99\*)—Plea—Duplicity.**—A plea of abatement on the ground of wrong venue, and on the ground of defendant's being immune from service of process when and where he was served, is bad for duplicity.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 220.]

**3. Trial (§ 267 (4)\*)—Instructions—Requests Covered by Instructions Given.**—There is no reversible error in substituting for defendant's requested instruction another, which is a clear, correct, and adequate statement of the law from his standpoint, as applied to the facts of case.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

Error to Corporation Court of City of Lynchburg.

Action by the Southern Farm Agency against J. H. Fitzgerald. Judgment for plaintiff, and defendant brings error. Affirmed.

*Byrd, Fulton & Byrd*, of Richmond, *R. G. Hundley*, of Hopewell, and *Hubard, Gayle & Boatwright* of Buckingham, for plaintiff in error.

*Aubrey E. Strode*, of Amherst, for defendant in error.

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WASHINGTON & OLD DOMINION RY. *v.* F. S. ROYSTER  
GUANO CO.

Jan. 24, 1917.

[94 S. E. 763.]

**1. Commerce (§ 27\*)—Railroads—State Commissions—Jurisdiction.**—That a side track will be used for interstate commerce as well as intrastate commerce does not deprive the State Corporation Commission of jurisdiction to compel the construction or extension of the same.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 577, 578; 15 Va.-W. Va. Enc. Dig. 529.]

**2. Railroads (§ 134 (1)\*)—Lessees—Side Tracks.**—Where, after lessee of a railroad took over the road, part of a side track burned, and the entire track was necessary, the lessee must rebuild, and it is immaterial that a certain concern will be especially benefited, as all are a part of the public and are entitled to equal facilities.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 616.]

**3. Railroads (§ 216\*)—Extension of Spur.**—A railroad cannot re-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.